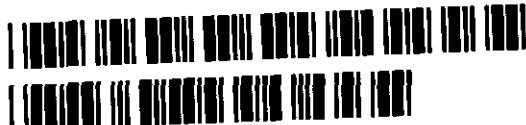


1      FILED  
2      LODGED      ENTERED  
3      SEP 14 2010  
4      BY CLERK AT SEATTLE  
5      CLERK U.S. DISTRICT COURT  
6      WESTERN DISTRICT OF WASHINGTON DEPUTY

THE HONORABLE JAMES L. ROBART



10-CV-00198-ORD

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

10      **MARK A. ARTHUR, CIRILO MARTINEZ,  
11      and PARI NAJAFI on behalf of themselves  
12      and all others similarly situated,**

13      **Plaintiffs,**

14      **v.**

15      **SALLIE MAE, INC.,**

16      **Defendant.**

**CLASS ACTION**

NO. 10-cv-00198-JLR

**ORDER CERTIFYING  
PROVISIONAL SETTLEMENT  
CLASS, PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT AND PROVIDING  
FOR NOTICE TO THE  
SETTLEMENT CLASS**

1                   WHEREAS, a putative class action is pending in this Court entitled Mark A.  
 2 Arthur, Cirilo Martinez and Pari Naifai v. Sallie Mae, Inc., Case No. C10-0198 JLR (the  
 3 “Action”);

4                   WHEREAS, the parties to the Action have agreed, subject to Court approval  
 5 following notice to the proposed Settlement Class (as described in Paragraph 6 below) and a  
 6 hearing, to settle this Action upon the terms and conditions set forth in the settlement agreement  
 7 lodged with this Court (the “Agreement”);

8                   WHEREAS, this Court has reviewed the Agreement, as well as the files, records  
 9 and proceedings to date in this matter;

10                  WHEREAS, for purposes of this Order, capitalized terms used below shall have  
 11 the meaning ascribed to them in the Agreement, unless otherwise defined; and

12                  WHEREAS, for purposes of the Action, this Court has subject matter and personal  
 13 jurisdiction over the parties, including all Settlement Class Members.

14                  NOW, THEREFORE, based on this Court’s review of the Agreement and all of  
 15 the files, records, and proceedings herein, the Court concludes, upon preliminary examination,  
 16 that the Agreement and Settlement appear fair, reasonable, and adequate, and within the range of  
 17 reasonableness for preliminary settlement approval, and that a hearing should and will be held  
 18 after notice to the Settlement Class (as described in Paragraph 6 below) to confirm that the  
 19 Agreement and Settlement are fair, reasonable and adequate and to determine whether the  
 20 Settlement should be approved and final judgment entered in the Action based upon the  
 21 Agreement.

22                  IT IS HEREBY ORDERED THAT:

23                  1.        Preliminary Approval Of Proposed Settlement. The Agreement, including all  
 24 exhibits thereto, is preliminarily approved as fair, reasonable and adequate and within the range  
 25 of reasonableness for preliminary settlement approval. The Court finds that: (a) the Agreement  
 26

1 resulted from extensive arm's length negotiations; and (b) the Agreement is sufficient to warrant  
 2 notice of the Settlement to persons in the Settlement Class and a full hearing on the approval of  
 3 the Settlement.

4       2.     Class Certification For Settlement Purposes Only. Pursuant to Federal Rule of  
 5 Civil Procedure 23(c), the Court conditionally certifies, for settlement purposes only, the  
 6 following Settlement Class:

7       All persons to whom, on or after October 27, 2005, Sallie Mae, Inc. or any other  
 8 affiliate or subsidiary of SLM Corporation placed a non-emergency telephone call  
 9 to a cellular telephone through the use of an automatic telephone dialing system  
 10 and/or an artificial or prerecorded voice. Excluded from the Settlement Class are  
 11 SLM Corporation, Sallie Mae, Inc. and other affiliates or subsidiaries of SLM  
 12 Corporation, and any entities in which any of such companies has a controlling  
 13 interest, the Judge to whom the Action is assigned and any member of the Judge's  
 14 staff and immediate family, as well as all persons who validly request exclusion  
 15 from the Settlement Class.

16       In connection with this conditional certification, the Court makes the following  
 17 preliminary findings:

- 18           (a)     The Settlement Class appears to be so numerous that joinder of all  
 19 members is impracticable;
- 20           (b)     There appear to be questions of law or fact common to the Settlement Class  
 21 for purposes of determining whether this Settlement should be approved;
- 22           (c)     Plaintiffs' claims appear to be typical of the claims being resolved through  
 23 the proposed settlement;
- 24           (d)     Plaintiffs appear to be capable of fairly and adequately protecting the  
 25 interests of the Settlement Class Members in connection with the proposed settlement;
- 26           (e)     For purposes of determining whether the Settlement is fair, reasonable and  
 27 adequate, common questions of law and fact appear to predominate over questions affecting only  
 28 individual Settlement Class Members. Accordingly, the Settlement Class appears to be  
 29 sufficiently cohesive to warrant settlement by representation; and

1 (f) For purposes of settlement, certification of the Settlement Class appears to  
2 be superior to other available methods for the fair and efficient settlement of the claims of the  
3 Settlement Class Members.

4       3.     Class Representatives. Plaintiffs are designated as class representatives for the  
5     Settlement Class.

6       4.     Class Counsel. The Court appoints Lieff Cabraser Heimann & Bernstein, LLP,  
7     David P. Meyer & Associates Co., LPA, Terrell Marshall & Daudt PLLC, Hyde & Swigart,  
8     Kazerouni Law Group, and Law Offices of Douglas J Campion as counsel for the Settlement  
9     Class. The Court finds that counsel is competent and capable of exercising all responsibilities as  
10    Class Counsel for the Settlement Class.

11       5. Settlement Hearing. A final approval hearing (the “Settlement Hearing”) shall be  
12 held before the Honorable James L. Robart, on January 17, 2011 at 9:30 a.m, as set forth in the  
13 notice to the Settlement Class (described in Paragraph 6 below), to determine whether the  
14 Agreement is fair, reasonable and adequate and should be approved. Papers in support of final  
15 approval of the Agreement, the incentive award to Plaintiffs and Class Counsel’s application for  
16 an award of attorneys’ fees, costs and expenses (the “Fee Application”) shall be filed with the  
17 Court according to the schedule set forth in Paragraph 11 below. The Settlement Hearing may be  
18 postponed, adjourned, or continued by order of the Court without further notice to the Settlement  
19 Class. After the Settlement Hearing, the Court may enter a settlement order and final judgment in  
20 accordance with the Agreement that will adjudicate the rights of the Settlement Class Members  
21 with respect to the Released Claims being settled.

22        6. Class Notice. Class Notice shall be sent within thirty (30) days following entry of  
23 this Order.

24 (a) E-mail Notice or Mail Notice. The Claims Administrator and/or Sallie  
25 Mae will provide individual notice to all persons in the Settlement Class for whom Sallie Mae

1 possesses an email and/or physical address, via either E-mail Notice or Mail Notice. E-mail  
 2 Notice will be sent via electronic mail, to the most recent email address as reflected in reasonably  
 3 available computerized account records of Sallie Mae or its affiliates, to all persons in the  
 4 Settlement Class for whom such records exist and who have not opted out of receiving electronic  
 5 mail from Sallie Mae, in accordance with Sallie Mae's currently existing email opt-out policies.  
 6 Mail Notice will be sent via direct mail, to the most recent mailing address as reflected in  
 7 reasonably available computerized account records of Sallie Mae or its affiliates, for those  
 8 persons in the Settlement Class for whom Sallie Mae or its affiliates do not have an email address  
 9 (as reflected in reasonably available computerized account records of Sallie Mae or its affiliates)  
 10 and/or who have opted out of receiving emails from Sallie Mae, in accordance with Sallie Mae's  
 11 currently existing email opt-out policies, and to those Settlement Class Members whose emails  
 12 are undeliverable. Skip tracing shall be performed by the Claims Administrator for all returned  
 13 mail; all costs of skip tracing will be considered Settlement Costs and deducted from the Fund.  
 14 At Sallie Mae's discretion, subject to approval of Arthur Counsel (which approval shall not be  
 15 unreasonably withheld), the E-mail Notice and Mail Notice may be provided by way of a bill-  
 16 stuffer in a periodic or billing statement, a solo electronic mailing or direct mailing, or a  
 17 combination thereof.

18 (b) Publication Notice. The Claims Administrator will publish a notice of the  
 19 Settlement in two separate national editions of USA Today and one national edition of the U.S.  
 20 Wall Street Journal.

21 (c) Internet Notice. The Claims Administrator will establish and maintain an  
 22 Internet site using a domain name dedicated to the Settlement, on which will be posted the E-mail  
 23 Notice, Mail Notice and Claim Form. The E-mail Notice, Mail Notice and Publication Notice  
 24 shall direct recipients to the location of the Internet Notice. The website shall also provide for  
 25 online submission of Claim Forms. The Settlement web page will be established within five (5)  
 26

1 days after the Court's entry of this Order and shall remain active at least until the date of the Final  
 2 Approval Hearing and through the end of the Claim Period.

3       7.     Findings Concerning Class Notice. The Court finds that the foregoing program of  
 4 Class Notice and the manner of its dissemination is the best practicable notice under the  
 5 circumstances and is reasonably calculated to apprise the Settlement Class of the pendency of this  
 6 Action and their right to object to or exclude themselves from the Settlement Class. The Court  
 7 further finds that the Class Notice program is reasonable, that it constitutes due, adequate and  
 8 sufficient notice to all persons entitled to receive notice and that it meets the requirements of due  
 9 process and Federal Rule of Civil Procedure 23.

10       8.     Administration. The Claim Form and the claims submission process described in  
 11 the Agreement are hereby approved. In addition, the Court confirms that it is appropriate for  
 12 Sallie Mae to provide the information necessary to provide the notice contemplated herein and to  
 13 administer the settlement, including names, addresses and account information.

14       9.     Exclusion From The Settlement Class.

15       (a)    Persons in the Settlement Class will possess the right to opt out by sending  
 16 a written request to a designated address within ninety (90) days after entry of this Order. All  
 17 Settlement Class Members who do not opt out in accordance with the terms set forth herein will  
 18 be bound by all determinations and judgments in the Action.

19       (b)    Exclusion requests must: (i) be signed; (ii) include the full name, address  
 20 and account number(s) of the person(s) requesting exclusion (except that persons in the  
 21 Settlement Class who do not have and have not had some lending or servicing relationship with  
 22 Sallie Mae or another affiliate or subsidiary of SLM shall not be required to include an account  
 23 number); and (c) include the following statement: "I/we request to be excluded from the class  
 24 settlement in Arthur, et al. v. Sallie Mae, Inc., W.D. Wash., Case No. C10-0198 JLR." No  
 25 request for exclusion will be valid unless all of the information described above is included. For  
 26

1 any person in the Settlement Class who has more than one account, the exclusion request must  
 2 specify each separate account. No Settlement Class Member, or any person acting on behalf of or  
 3 in concert or participation with that Settlement Class Member, may exclude any other Settlement  
 4 Class Member from the Settlement Class.

5 (c) The Claims Administrator will retain a copy of all requests for exclusion.  
 6 Not later than ten (10) days before the Final Approval Hearing, the Claims Administrator shall  
 7 file with the Court a declaration that lists all of the opt-outs received.

8 (d) If 1,000 or more persons in the Settlement Class opt out of the Settlement,  
 9 then Sallie Mae, in its sole discretion, will have the right to terminate the Settlement and the  
 10 Agreement. In the event that the Settlement is terminated pursuant to this Paragraph, the parties  
 11 will be returned to the status quo ante as if no Settlement had been negotiated or entered into.

12 10. Objections And Appearances.

13 (a) Any person in the Settlement Class who has not timely submitted a valid  
 14 request for exclusion from the Settlement Class, and thus is a Settlement Class Member, may  
 15 appear at the Final Approval Hearing to argue that the proposed Settlement should not be  
 16 approved and/or to oppose the application of Class Counsel for an award of attorneys' fees and  
 17 the incentive awards to the Plaintiffs.

18 (b) In order to be heard at the hearing, the person must make any objection in  
 19 writing and file it with the Court not later than ninety (90) days after entry of this Order. The  
 20 objection must also be mailed to each of the following, postmarked not later than the last day to  
 21 file the objection: (i) Arthur Counsel – Daniel M. Hutchinson, Lieff, Cabraser, Heimann &  
 22 Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111; and (ii) counsel for  
 23 Sallie Mae – Julia B. Strickland, Stroock & Stroock & Lavan LLP, 2029 Century Park East, 16th  
 24 Floor, Los Angeles, CA 90067. Any objections that are not timely filed and mailed shall be  
 25 forever barred.

26

1           11. Further Papers In Support Of Settlement And Fee Application. Any responses to  
 2 objections to the Agreement and any papers in support of the Settlement and Fee Application  
 3 shall be filed with the Court on or before the Final Approval Hearing.

4           12. Effect of Failure to Approve the Agreement. In the event the Agreement is not  
 5 approved by the Court, or for any reason the parties fail to obtain a Final Judgment as  
 6 contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any  
 7 reason, then the following shall apply:

8               (a) All orders and findings entered in connection with the Agreement shall  
 9 become null and void and have no further force and effect, shall not be used or referred to for any  
 10 purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

11               (b) The conditional certification of the Settlement Class pursuant to this Order  
 12 shall be vacated automatically and void; no doctrine of waiver, estoppel or preclusion shall be  
 13 asserted in any litigated certification proceedings in the Action; and the Agreement and its  
 14 existence shall be inadmissible to establish any fact relevant to class certification or any alleged  
 15 liability of Sallie Mae for the matters alleged in the Actions or for any other purpose;

16               (c) Nothing contained in this Order is, or may be construed as, any admission  
 17 or concession by or against Sallie Mae or Plaintiffs on any point of fact or law; and

18               (d) Neither the settlement terms nor any publicly disseminated information  
 19 regarding the settlement, including, without limitation, the class notices, court filings, orders and  
 20 public statements, may be used as evidence for any purpose whatsoever. In addition, neither the  
 21 fact of, nor any documents relating to, Sallie Mae's withdrawal from the settlement, any failure of  
 22 the Court to approve the settlement and/or any objections or interventions may be used as  
 23 evidence for any purpose whatsoever.

24           13. Stay/Bar Of Other Proceedings. All proceedings in this Action are stayed until  
 25 further order of the Court, except as may be necessary to implement the terms of the settlement.

1 Pending final determination of whether the settlement should be approved, Plaintiffs, all persons  
2 in the Settlement Class and persons purporting to act on their behalf are enjoined from  
3 commencing or prosecuting (either directly, representatively or in any other capacity) against any  
4 of the Released Parties any action, arbitration or proceeding in any court, arbitration forum or  
5 tribunal asserting any of the Released Claims.

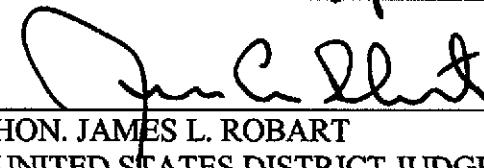
6

7 **IT IS SO ORDERED.**

8

9 Dated this 14<sup>th</sup> day of September, 2010.

10

11   
12 HON. JAMES L. ROBART  
UNITED STATES DISTRICT JUDGE

13

14 Presented by: /s/ Beth E. Terrell, WSBA #26759  
Beth E. Terrell, WSBA #26759

15 TERRELL MARSHALL & DAUDT PLLC  
16 3600 Fremont Avenue North  
Seattle, Washington 98103  
17 Telephone: 206-816-6603

18

19

20

21

22

23

24

25

26